

TEAM WORLDWIDE CORPORATION V. ACADEMY, LTD., et al.

Lead Case No. 2:19-cv-00092-JRG-RSP

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO STRIKE
TWW'S AMENDED DEPOSITION DESIGNATIONS
AND AMENDED TRIAL WITNESS LIST

EXHIBIT 5 - Redacted

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BESTWAY (USA) INC., INTEX RECREATION CORP.,
WALMART INC., WAL-MART STORES TEXAS, LLC, WAL-MART.COM
USA LLC, and SAM'S WEST, INC. *d/b/a* SAM'S CLUB

Petitioners

v.

TEAM WORLDWIDE CORPORATION

Patent Owner

Case IPR2018-00870
Patent No. 7,246,394

Before BEVERLY M. BUNTING, JAMES J. MAYBERRY, and
ERIC C. JESCHKE, *Administrative Patent Judges*.

**DECLARATION OF RYAN SLATE IN SUPPORT OF
PETITIONERS' REPLY**

I, Ryan Slate, declare and state as follows:

1. I am more than eighteen years of age and I am competent to make this declaration. I have personal knowledge of the facts stated herein and would testify to such facts if asked to do so.

2. I submit this declaration in connection with several *Inter Partes* Review proceedings before the Patent Trial and Appeal Board of the U.S. Patent and Trademark Office, including: IPR2018-00859, IPR2018-00870, IPR2018-00871, IPR2018-00872, IPR2018-00873, IPR2018-00874, and IPR2018-00875.

3. I am an employee of Petitioner Intex Recreation Corp. (“Intex”). I hold a master’s in business administrations (MBA) from the University of Southern California and a degree in business administration from San Diego State University. I have been employed by Intex for approximately fourteen years. I am currently the Director of Sales for Intex, and I have held this position since approximately 2005. As the Director of Sales, I am responsible for all North American accounts. In that role, I facilitate the sales of Intex products to accounts in the United States and Canada, manage various teams and aspects of marketing, contribute to product packaging development to maximize sales opportunities, and review all elements of product channel management within the North American territory.

Intex Documents

4. Petitioners' Exhibit 1651 is a true and accurate copy of a spreadsheet

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5. Petitioners' Exhibit 1652 is a true and accurate copy of a spreadsheet

REDACTED

6. Petitioners' Exhibit 1653 is a true and accurate copy of a spreadsheet

REDACTED

7. Petitioners' Exhibit 1654 is a true and accurate copy of a spreadsheet

REDACTED

Airbed Features

8. Based on my years of experience in the airbed industry, there are numerous airbed features that are promoted to consumers and considered during an

airbed purchasing decision, including: quality, comfort, durability, size, height, product warranty, convenience (e.g., carrying bags), and whether a pump is included with their purchase and the type of pump to be used with the airbed (including manual pumps, electric hand-held pumps, and pumps that are attached to the airbed). Because one of the primary benefits of an airbed is its versatility and convenience—i.e., airbeds are a “bedroom in a box” that can be used indoors and outdoors and that provide an easy to transport, easy to store, quality sleep solution—and because their primary purpose is to be slept on, not surprisingly comfort and durability are the most important features to consumers, manufacturers and sellers of airbeds.

9. Numerous factors impact comfort. The height and size of the airbed is important for comfort, as the further the sleeping surface is from the ground the better the sleeping experience. Stability is also important, because a more stable bed results in a better sleeping experience. Materials that create an airtight bed that will not lose air also relate to comfort, because if the product does not leak air when in use the user will have a more comfortable sleeping experience. This quality-focused feature that also results in a comfortable product is referred to, and

marketed, by Intex as its AirLock[®] guarantee.¹ The materials used on the sleeping surface of the bed are also important for comfort—for example, a higher-end, more expensive plush topper is more comfortable than an airbed without a non-plush topper. Most importantly for comfort, however, is the materials used on the inside of the airbed for the internal support structures; those materials are what directly correspond to the support necessary to maintain the shape of the mattress and provide the user with a comfortable night's sleep.

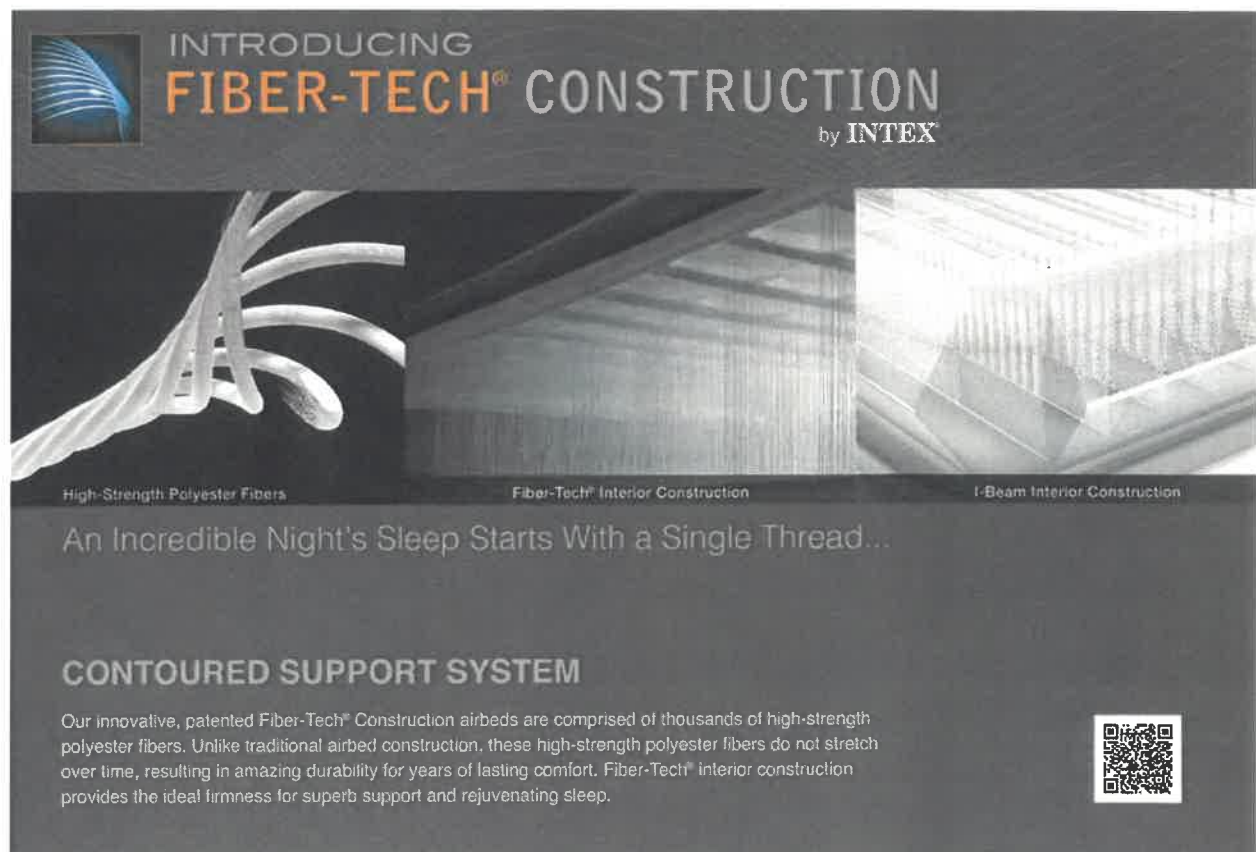
10. All airbeds have internal support structures. Traditional internal support structures were made with PVC (e.g., PVC coils or PVC sheets). Intex discovered that these PVC structures, however, would degrade when the airbed was used as intended. Accordingly, Intex developed and patented a new type of internal support structure,² which does not use PVC but instead uses thousands of fibers to create the most comfortable user experience available on the market today. Intex refers to this as its Fiber-Tech[®] technology, which is used inside all of its Dura-Beam[®] product lines.

¹ See Ex. 1655 at 5. Ex. 1655 is a true and accurate copy of a 2019 Intex product catalog.

² Ex. 1656 (U.S. Patent No. 8,562,773) and Ex. 1657 (U.S. Patent No. 9,156,203).

11. Durability is also directly associated with the materials used to construct an airbed as well as the overall construction. The quality of the materials used—both on the inside of the airbed and to create the outer walls and surfaces—and the quality of the workmanship, correspond directly to a strong, puncture-resistant product that will not leak, that can be used indoors and outdoors, and that can be inflated and deflated numerous times without losing its integrity.

12. Intex conveys these comfort and durability messages directly to people and companies who buy its products, especially through its Dura-Beam® product line employing Fiber-Tech® technology. The image below is from an Intex catalog describing these products and technology:





Ex. 1655 at 8-9.

13. As Intex explains in its catalogs (which it uses to help sell products to retailers like Walmart), this new technology consists of thousands of “lightweight, high strength fibers” that “do not stretch” like traditional PVC and, as a result, create “amazing durability for years of lasting comfort.” (*Id.*)

14. Intex’s consumer-facing product packaging also touts this information, as well as additional information about Dura-Beam® and Fiber-Tech®. The following image is an Intex product package for one of its “Plus” Dura-Beam® beds—which is a mid-tier product offering for Intex:



See Ex. 1622.³

15. As Ex. 1622 demonstrates, the Dura-Beam® technology is extremely important and, as such, is given significant and tangible weight from a marketing standpoint; it dominates any other feature promoted for Intex's beds. Further, Ex. 1622 demonstrates that Intex's product package describes the "Dura-Beam® Airbed

³ Ex. 1622 is a true and accurate copy of an Intex product package, showing the principal display panel of the packaging.

Advantage,” which is that this patented technology results in airbeds that are “100% more durable, 35% more supportive, and 15% lighter” than airbeds that do not have this technology. (*Id.*) Intex also explains how these “high-strength fibers provide added comfort and support.” (*Id.*) And Intex’s packaging identifies additional, comfort- and durability-focused features, such as its “Plush Dual Air Pillowtop System for added Comfort,” “Flocked sides are more puncture and abrasion resistant,” and “Unique edge construction for more sleeping space and mattress stability.” (*Id.*)⁴

⁴ This package also mentions a “built-in pump” which I understand TWW contends infringes its patent claims. (Ex. 1622.) Notably, the reference to the pump is a very minor portion of the package. (*Id.*) Plus, Intex devotes this same packaging real estate for pumps on airbed product packaging that use an external pump, which I understand does not relate at all to the patents in these IPR proceedings. (*See* Ex. 1659 at 3-4. Ex. 1659 is a true and accurate copy of product packaging layouts for the Intex products identified on the packaging.) Thus, this confirms that, as I noted earlier, consumers want to know whether they are receiving a pump and what type of pump they need, but other features—such as comfort and durability—are much more important.

REDACTED

16. Intex has confirmed these results through testing.

REDACTED

Marketing and Promotion of Airbed Features

17. Intex markets numerous product features to consumers and buyers of its products. It does this both in its catalogs and in its product packaging. In my experience, product packaging and marketing play an important role in airbed consumers' buying decisions.

18. In particular—and especially since the launch of Intex's Dura-Beam® line of products—Intex focuses primarily on promoting comfort and durability to consumers, because these are the most important drivers of consumer purchasing decisions.

19. Intex's product packaging demonstrates this marketing strategy. In particular, as I testified in my deposition, Intex allocates the most important

product features the most weight (i.e., the most space) on the product packaging.

Ex. 1660 at 78:5-13, 84:1-8. And Intex's product packaging proves this, as shown by the images I discussed above. *See* Ex. 1622; *see also* Ex. 2605 at 13-18; Ex. 1655 at 8-9.

Walmart Sales Departments

20. I have reviewed Ex. 2600, which is a 2017 email between me and buyers of airbeds at Walmart that | REDACTED
REDACTED I believe it is important to clarify my intent behind that email.

21. REDACTED

REDACTED

22. In fact, other data I have reviewed, REDACTED
REDACTED demonstrates that whether or not the pump is attached the airbed is not the

reason Intex's sales have increased.

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REDACTED What really caused Intex's sales to grow was the innovation of Intex's
Fiber-Tech® technology included in our Dura-Beam® product line and Intex's
strategy of marketing that technology—both in its catalogs and in its product
packaging—and this is true for airbeds with pumps attached to the bed and for
airbeds without an attached pump. *See* REDACTED Additionally, my
experience is that Intex's sales grew over time because: REDACTED

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confirms this as well.

23. I hereby declare that all statements made herein of my own
knowledge are true and that all statements made on information and belief are
believed to be true; and further, that these statements are made with the knowledge
that willful false statements and the like so made are punishable by fine or
imprisonment, or both, under Section 101 of Title 18 of the United States Code.

Executed on: April 16, 2019

By:


Ryan Slate